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Illinois Independent Telephone Association]

CHIEF CLERK'S OFFICE

Petition for initiation of an investigation of]
the necessity of and the establishment of a]
Universal Service Support Fund in accordance]
with §13-301(d) of the Public Utilities Act]

00-0233

(Consolidated)

Illinois Commerce Commission On Its Own Motion]

00-0335

Investigation into the necessity of and, if]
appropriate, the establishment of a Universal]
Support Fund pursuant to Section 13-301(d)]
of the Public Utilities Act.]

APPLICATION FOR REHEARING AND RECONSIDERATION

NOW COME Intervenor, Leaf River Telephone Company, Montrose Mutual Telephone Company, New Windsor Telephone Company, Oneida Telephone Exchange, Viola Home Telephone Company, and Woodhull Community Telephone Company, by their attorney, Gary L. Smith, of Loewenstein, Hagen, & Smith, P.C, and pursuant to 220 ILCS 5/10-113, hereby move the Commission to reconsider its order of September 18, 2001 ("Order") and served on September 19, 2001, in this matter, and that the Commission enter an amended order on rehearing and in support thereof sets forth the following errors:

1. The Order is contrary to the manifest weight of the evidence and is legally erroneous in that it finds that the size of the fund is \$6.6 million (less accounting adjustments). The Order relied on Verizon's representations that using an affordable rate

*Res. H. Smith
10-18-01
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of \$22.23¹ would result in a fund size of \$6.6 million. The IITA requested a universal service fund in the amount of \$12,959,292 based on the current rate as the affordable rate.² Verizon represented that an affordable rate of \$22.23 would reduce the fund size by \$6.2 million and would yield a fund size of \$6.6 million, less accounting adjustments plus administrative expenses. However, Verizon grossly miscalculated the fund size in claiming a reduction of \$6.2 million as the impact of a \$22.23 affordable rate.

Verizon's witness, Ed Beauvais purported to calculate the fund size, but in doing so, he did not use the small telephone companies' individual rate of return evidence or exclude the companies that were not seeking any universal service support. Attached to Verizon Ex. 4 was EBC-2 (EBC-2 is attachment 1 to this petition). This is the source of numerous errors. For example, Verizon Ex. 4, EBC-2, calculates a reduction in the fund of nearly \$1,000,000 attributed to Geneseo Telephone Company, even though Geneseo was not seeking any support from the fund. This mistake also occurs with Clarksville, Frontier-DePue, Frontier-Mt. Pulaski, Frontier-Orion, Hamilton, Kinsman, Leonore, Marseilles, and Stelle, on of which requested support. Verizon also failed to calculate each company's rate of return amounts in projecting a fund size. For example, Verizon Ex. 4, EBC-2, attributes a fund reduction of \$353,000 to Adams Telephone Company, but Adams only sought \$119,000 support under its rate of return evidence. This mistake also applied to Alhambra, Cambridge, Crossville, El Paso, Glasford and Reynolds on EBC-2.

¹ Petitioners contest the \$22.23 as the affordable rate and, without waiving that objection, utilize that number only for purposes of this objection on the correct size of the fund and the failure to support secondary lies.

² The Order at page 18 and 38 states this amount as \$12,799,298, but see IITA position at page 34 of the order for larger amount.

Verizon's representation that an affordable rate of \$22.23 reduces the original request of \$12,959,292 by \$6.2 million is contrary to the manifest weight of the evidence and is not supported by the evidence in the record. Assuming an affordable rate of \$22.23, the actual size of the fund would be \$9,283,596 (see attachment 2 for these calculations). The accounting adjustments total \$966,719, so the actual size of the fund, after the accounting adjustments equals \$8,420,271 (see attachment 2 for these calculations). If the Commission does not change the \$22.23 figure as the affordable rate (although it should as set forth below) the Commission must increase the size of the fund accordingly and it should do so effective October 1, 2001, the date the fund was established.

2. The Order is unlawful and contrary to the manifest weight of the evidence in that it finds that universal service will support only one residence line and one business line. This finding is not supported by any evidence in the record and is vague, ambiguous and unenforceable. A secondary line is not a discretionary service (Order @5). The FCC supports all access lines, and supporting less than all access lines is contrary to 47 USC §254(f). The FCC has therefore preempted this matter. (Petitioners hereby incorporate the argument in their brief at 51-52, 9-11).

The failure to support all access lines is contrary to 220 ILCS 5/13-301(d), 220 ILCS 5/13-712 and 220 ILCS 5/13-517, which make no distinction between primary and secondary lines. Attached hereto as attachment 3 is a calculation based on an assumption of an affordable rate of \$22.23. This calculation assumes that 15% of all access lines are secondary lines and each carrier's fund support would be reduced by 15% by excluding

secondary lines. Under those assumptions, in order for LRTC to meet its revenue requirement with no universal service support for secondary lines, LRTC would need to charge its customers, for both secondary and residential secondary lines, \$25.59 above the \$22.23 rate, *i.e.*, \$47.91 for each secondary line! This is an intolerable rate for secondary lines and it discourages commerce in rural areas. This failure to support secondary lines adversely affects other petitioners as well.

LRTC testified that it has six business lines to the local school and seven access lines to the local volunteer fire department, all at the business rate (L.R. Ex. 2 @ 4). The Commission's present order results in a pricing structure that will be borne by schools, libraries, post offices and other governmental agencies, and thus is contrary to the policy of the State of Illinois. With secondary lines at these rates, residents of homes are encouraged to put multiple lines in separate accounts and pay separate bills simply to avoid this burdensome result. It further encourages small business corporations to transfer secondary lines or fax lines to the individual name of the business owner at the place of business. The Commission should amend its order to support all access lines as the FCC has done.

3. The Order is unlawful and contrary to the manifest weight of the evidence in that it sets an affordable rate of \$22.23 when there was no substantial evidence that the affordable rate should be set any greater amount than the current rate pursuant to 220 ILCS 13-301(d). Petitioners hereby incorporate argument II, pages 15-22 of their brief for this error. The FCC, on October 11, 2001, adopted a Second Report and Order in docket Nos. 00-256, 96-45, 98-77, 98-166. The Commission should take administrative

FCC. The Commission should take administrative notice of the release and order (83 Ill. Adm. Code 200.640(a)(1)). While the FCC's order has not been released to the public at this time, it is clear that the federal subscriber line charge for residences will increase by \$1.50 on January 1, 2002, and business lines will increase by \$3.20 on January 1, 2002. Additional increases are possible on July 1, 2002 and January 1, 2003. These Additional Charges impose additional burdens on rural rate payers and the \$22.23 rate should not be the affordable rate. The Commission should amend its Order to make the current rate of each company the affordable rate.

4. Alternatively, assuming the Commission does not find the current rate to be the affordable rate, the Order is against the manifest weight of the evidence in that it finds that \$22.23 is the affordable rate when Verizon's real rate is \$20.39. The Order bases this finding on Verizon's calculations of \$22.23, which erroneously includes \$5.24 in local usage charges for multiple exchange calling in Verizon's territory. Verizon's rate of \$22.23 is unreliable because it includes cross subsidies (T.393) between its larger exchanges (Class A, T.384-385) and its rural exchanges (Class B, T.385).

The Administrative Law Judge's Past Exceptions Proposed Order (PEPO) was correct in finding that Dr. Beauvais miscalculated the amount of usage in establishing the \$22.23 affordable rate (PEPO @27). Verizon's real rate per call is correctly indicated as 3.4 cents as established by its tariffs on file (PEPO @27). (See true and accurate copy of Verizon's tariff Ill.C.C. No. 9, Sec. 2, 8th revised sheet 6, attached hereto as Attachment

5.)³ Dr. Beauvais testified that he calculated \$5.24 usage based upon 100 calls per month, somewhere around 400 minutes a month, which is what one would expect of typical residential one-party usage (T.378-379). Using 100 calls, the usage charge should have been \$3.40 rather than \$5.24, which, together with the \$16.99 basic rate service for residential and business customers, equals a monthly rate of \$20.39 rather than \$22.23. At an affordable rate of \$20.39, the fund size would equal \$10,823,922 or \$9,858,975 after accounting adjustments. See attachment 6.

As Dr. Bouvais acknowledged, the local usage figure for Verizon includes not only calls within the home exchange but extended area calling as well. Most Illinois small companies' basic service rate include only calling within the local exchange, therefore, those customers must pay an additional intraMSA toll rate to make extended area calls to larger communities where they work, have children go to work, shop, and obtain health and other professional services that are not available in smaller communities. Verizon's proposed affordable rate is not an appropriate proxy for a statewide affordable rate for small companies. The Orders' Conclusions at pages 32-33 are unlawful and against the manifest weight of the evidence in that federal universal service support does not compensate petitioners for the disparity in the appropriate calculation of the affordable rate and usage area.

5. The Order is unlawful and contrary to 47 USC 254(f) in that it orders an affordable rate of \$22.23, which is contrary to, and will burden federal universal service

³ Petitioners request that the Commission take administrative notice of Verizon's Tariff on file with the Commission.

support for lifeline subscribers who receive only \$7.50 per month in support. The affordable rate of \$22.23 eliminates federal lifeline support mechanisms for lifeline subscribers contrary to federal law. The Order's conclusions at page 14, 37-38 are unlawful, against the manifest weight of the evidence and are not support by substantial evidence. (Petitioners hereby incorporate pages 17-18 of LRTC brief for this error.)

6. The Order is unlawful and contrary to the manifest weight of the evidence in that it finds that no party (other than the IITA) suggested that advanced services should be considered as supported services and that the issue was waived for the failure to brief it. In fact, Leaf River Telephone Company introduced evidence, and Petitioners briefed the issue that advanced services should be supported universal services under the express policy of the legislature in 220 ILCS 5/13-517. Petitioners incorporate their argument in their brief @ 51-53). Furthermore, it is unlawful and contrary to the policy of the State of Illinois for the Commission not to fund advanced services as a supported service.

7. The Order is legally erroneous in that it misinterprets the meaning of the terms "economic costs" and "costs" in 220 ILCS 5/13-301(d) as requiring a showing of forward-looking costs rather than embedded or historical costs of the receiving carriers. The Order is contrary to *Commonwealth Edison v. Ill.Comm.Comm.*, 2-00-0375, June 6, 2001 and is contrary to the legislative intent. (Petitioners hereby incorporate their argument in their initial brief 1-14; reply brief 1-4).

8. The Order is legally erroneous in that it finds that a receiving carrier must use forward-looking costs in order to establish its eligibility for universal service support. This finding is contrary to 47 USC 254(f) and the Federal Communications Commission

has preempted this matter by adopting the use of embedded costs for universal service in its rules. (Petitioners hereby incorporate their argument @ pages 8-14 of their brief.)

9. As to Leaf River Telephone Company, it was a denial of due process under the Illinois and U.S. Constitutions and an abuse of discretion to strike the testimony of Michael Petrouske regarding Leaf River's embedded costs. Mr. Petrouske's testimony in Leaf River Telephone Company Exhibit 3 Redacted was stricken. Furthermore, the objecting parties waived their objections to this evidence. It was a denial of due process and equal protection to Leaf River not to admit Leaf River Telephone Company Exhibit 3 into evidence and find Leaf River's support need to be \$375,827. (Leaf River Telephone Company hereby incorporates pages 22-33 of its brief on this error.)

10. The Commission's Order fails to make findings of fact sufficient for appellate review.

11. The Commission's Order is unlawful in that it amounts to retroactive ratemaking.

12. The Commission's Order is unlawful in that the staff failed to investigate the impact of an affordable rate contrary to *CURED v. Ill.C.C.*, 285 Ill.App.^{3d} 82 (1996). Petitioners hereby incorporate their argument at pages 18-19 of their brief.

13. The Order failed to make findings of fact sufficient for appellate review and it is legally erroneous in that the order failed to make a decision on the issue that the interexchange carriers, which contributed to the DEM Fund and High cost Loop Fund, should have been ordered to lower their rates to correspond to the reduction in contributions to those funds as of October 1, 2001. (Petitioners hereby incorporate their

brief VI @ pg. 54.) The Commission is authorized to order a reduction of rates in the tariffs of the interexchange carriers, AT&T, MCI, Verizon, and Ameritech, (220 ILCS 5/13-501(b)) and the failure to lower those rates amounts to a windfall for these interexchange carriers and a double payment by the subscribers. Contrary to the Commission's finding on page 32 of the Order, the failure to reduce these rates amounts to an excessive surcharge on ratepayers.

14. The Order erred in finding a statewide affordable rate when, as a matter of law, 220 ILCS 5/13-301(e)(4) states that the affordable rate is to be established for the respective incumbent local exchange carrier, thus indicating a separate affordable rate on a company by company basis. Therefore the current rate must be the affordable rate under 220 ILCS 5/13-301.

15. The Commission's order is unlawful in that it incorrectly assigned the burden of proof on petitioners in an investigation proceeding.

WHEREFORE, Intervenors, Leaf River Telephone Company, Alhambra-Grantfork Telephone Company, The Crossville Telephone Company, Glasford Telephone Company, Montrose Mutual Telephone Company, New Windsor Telephone Company, Oneida Telephone Exchange, Viola Home Telephone Company, and Woodhull Community Telephone Company hereby respectfully pray that the Commission enter an Order providing the following relief.

A. Enter an amended order on rehearing consistent with the matters set forth above;

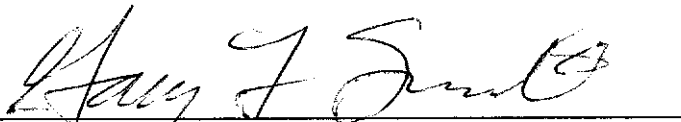
B. Order that a rehearing of this matter be held and enter an amended order as requested above; and

C. For such other and further relief as the Commission deems just.

Respectfully submitted,

LEAF RIVER TELEPHONE COMPANY, ALHAMBRA-
GRANTFORK TELEPHONE COMPANY, NEW WINDSOR
TELEPHONE COMPANY, ONEIDA TELEPHONE
EXCHANGE, VIOLA HOME TELEPHONE COMPANY, AND
WOODHULL COMMUNITY TELEPHONE COMPANY

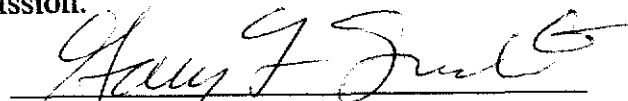
By:


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STATE OF ILLINOIS)
) SS
COUNTY OF ILLINOIS)

I, Gary L. Smith, being first duly sworn on oath, depose and state that I am the attorney for Petitioners herein; that Attachment 5 is a true and accurate copy of erizon's tariff on file with the Illinois Commerce Commission.

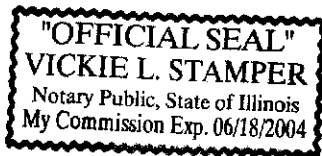


Gary L. Smith

Subscribed and sworn to before me, a notary public, this 18th day of October, 2001.



Notary Public



CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing application were served upon the parties on the service list in this case by e-mail, or by depositing same in the U.S. Mail, first class postage prepaid, on Oct. 18, 2001

Gary L. Smith
Gary L. Smith

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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NOTICE OF FILING

To:: Service List Attached

You are hereby notified that I have this 18th day of Oct, 2001, filed with the Chief Clerk of the Illinois Commerce Commission the Application for Rehearing and Reconsideration of Intervenor Leaf River Telephone Company, Alhambra-Grantfork Telephone Company, Crossville Telephone Company, Glasford Telephone Company, Montrose Mutual Telephone Company, New Windsor Telephone Company, Oneida Telephone Exchange, Viola Home Telephone Company, and Woodhull Community Telephone Company.



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